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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,486

09/26/2005

Michio Kubota

KUBOTA=16

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Browdy and Neimark, PLLC
1625 K Street, N.W.
Suite 1100
Washington, DC 20006

EXAMINER

WATTS, JENNA A

ART UNIT

PAPER NUMBER

1781

MAIL DATE

DELIVERY MODE

05/19/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/550,486	Applicant(s) KUBOTA ET AL.	
	Examiner Jenna A. Watts	Art Unit 1781	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1, 3 and 9.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Jenna A. Watts/
 Examiner, Art Unit 1781

/C. SAYALA/
 Primary Examiner, Art Unit 1781

Continuation of 11. does NOT place the application in condition for allowance because: The amendment to Claim 1 introduces possible new matter issues and therefore the amendment will not be entered. In particular, the amendment of the claim to read "and other alpha-glycosyl alpha, alpha trehaloses" may introduce new matter because the amendment implies that the previously claimed trehaloses are also alpha-glycosyl trehaloses, which does not appear to be the case and is also not supported by the originally filed specification. The claim as previously presented was supported by the originally filed specification.

With regard to Applicant's arguments relating to the prior art rejection, the Examiner respectfully disagrees with Applicant's position because as previously stated, Maruka teaches that the claimed saccharide derivatives of trehalose can be used in compositions comprising biologically active substances including hydrophobic non-saccharide ingredients and further teaches that the methods for incorporating the present non-reducing saccharides, relatively low reducing saccharides containing them and/or trehalose prepared from these saccharides into the above mentioned compositions include conventional methods of mixing, kneading, dissolving, melting, soaking, coating, spraying, crystallizing and solidifying (Column 14, lines 5-14) (see previously mailed office action, Page 6, Paragraph 12), therefore providing clear motivation and providing a reasonable degree of success for one of ordinary skill in the art for using any of the conventional methods for incorporating the claimed saccharide derivatives of trehalose into compositions containing hydrophobic non-saccharide ingredients, and the primary reference of Hasegawa in view of Aga teach combining trehalose with the same hydrophobic nonsaccharide ingredients as taught by Maruta and spray drying the composition to form a stable biologically active composition. Since Maruka teaches the claimed saccharide derivative of trehalose in a powder form and teaches its use in stabilizing compositions comprising hydrophobic non-saccharide ingredients and teaches conventional methods of combining such components, and further teaches the benefits of using the claimed saccharide derivatives of trehalose in such compositions (see previously mailed office action, Pages 5 and 6, Paragraphs 11 and 12), the Examiner holds the position that one of ordinary skill in the art would have been motivated to substitute the trehalose of the primary reference with the claimed saccharide derivative of trehalose taught by Maruta in order to arrive at the claimed invention. Lastly, it is noted that Maruta teaches the claimed saccharide derivative of trehalose with 50% by weight or more of the claimed trehalose as amended in the After-Final Amendment. Therefore, the rejection on record is maintained and the amendment will not be entered for the above mentioned reasons.